

Expert Editorial: 5 Myths About DTC Wine Shipping

By Alex Koral - June 1, 2022 546 0

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Americans spent more than \$4 billion on DTC wine shipments in 2021, and polls show broad support among consumers for liberalizing DTC shipping laws. Despite this, opposition to DTC shipping of alcohol remains a constant challenge for the market.

Some of the loudest voices standing against expanding DTC shipping permissions come from within the beverage alcohol industry itself, predominantly from the wholesaler tier, which almost universally stands against DTC shipping and spends vast amounts of lobbying money to impose legal constraints on current and would-be shippers. Other industry members, such as package stores and producers' guilds, have expressed their own reservations.

Arguments made against expanding DTC shipping revolve around theoretical harms that states and the public could experience if consumers were able to have alcohol shipped directly to them from across state lines. However, many of these claims collapse under any real scrutiny. ~~Instead, it appears that much of the opposition may be less concerned with public safety and more with maintaining a competitive advantage.~~

This rabid opposition to DTC shipping shows the special susceptibility of the beverage alcohol industry to this kind of parochial behavior.

Here are five arguments made against DTC that ~~just don't hold up under scrutiny.~~ **are supported by facts.**

Myth: Minors will buy DTC

Within the beverage alcohol industry, there's perhaps no more basic directive than preventing sales to minors. Every state prohibits even accidental sales to people less than 21 years of age, and regulators make enforcing such rules a perennial priority.

Of course, ~~as long as they're barred from buying alcohol, minors will look for ways to~~ subvert those barriers, and so DTC shippers have needed to find systems and practices to block access to minors. Opponents would have you believe the DTC shipping market presents a wholly unique situation, with rampant disregard for state laws and minors freely purchasing anything they want from all shippers.

While DTC shipping does present some challenges for preventing sales to minors, there are many services available that work to restrict the ability of minors to receive DTC shipments. When executed properly, point-of-sale age checks and point-of-delivery ID checks ably minimize access for minors.

In many ways, DTC shipping isn't an attractive market for minors, as most licensed DTC shippers are smaller wineries that sell only a select list of sought-after wines (with an average bottle price hovering around \$40 and often requiring additional fees for shipping and handling). Even if they can afford it, this isn't exactly what most college freshmen or high schoolers are looking for.

MISLEADING: The largest volume of wine sold DTC is under \$15 according to SOVOS data.

There are also access issues, with online purchases requiring the use of a credit card. And then shipments must be delivered to an adult who will sign for the package. While these aren't insurmountable challenges for a motivated minor, using a fake ID at a local package store or finding a friend or sibling who is of age would be much easier.

An ~~FTC report~~ on DTC wine shipping bears out the conclusion that the market isn't conducive to sales to minors. And while that report is from before the explosion in DTC shipping, there's been little clear evidence of purchases from minors through the DTC channel. Indeed, rates of underage drinking have been falling dramatically, even as the DTC wine shipping market has expanded.

Again, no one is saying that minors' access to alcohol is not a problem, but it is hypocritical to prohibit interstate DTC shipping or single out the DTC market as problematic — especially as states expand local deliveries, which often face the same challenges when it comes to preventing sales to minors.

FACT - Myth: DTC shippers don't pay taxes

If there's anything that scares a regulator more than minors buying alcohol, it's missing taxes. States bring in substantial amounts of revenue from taxes on alcohol sales, and they're right to want everything they're owed. However, many opponents allege that DTC shippers are tax dodgers and states are losing out from this market.

The truth is, DTC shipments are a huge source of additional taxes, bringing in lots of money that would otherwise not be available to the states. At Sovos ShipCompliant, we have facilitated the remittance of hundreds of millions of dollars in tax revenue to various states in just the last few years alone. And since DTC shipments are often of rare and not-widely distributed wine brands, that's not tax revenue the state would have otherwise recouped from sales made in package stores.

DTC shipping is a whole market beyond sales in stores and restaurants, and states that prohibit or heavily restrict DTC shipping are losing out on taxing those additional sales. In my experience with this industry, it's shocking how often DTC shippers are anxious to pay taxes to states in exchange for permission to ship into it; if those states block those shippers by denying them DTC licenses, the states are only hurting themselves.

FACT - Myth: States can't regulate out-of-state shippers

State regulators often claim that DTC shipping should be prohibited because it's hard for them to enforce, noting that jurisdictional concerns block them from prosecuting remote sellers that violate their laws. This flies in the face of the last 15 years of DTC shipping regulation.

The model DTC law that most states have adopted for domestic wineries explicitly requires them to accept the jurisdictional authority of the states in which they get licensed. States from Texas to Massachusetts have relied on those agreements to enforce their laws, whether that be collecting taxes or shipping volume limits.

States may struggle to go after unlicensed shippers, who are in clear violation of state laws (though Michigan is making a good go of it), but the solution to that would be to extend the ranks of businesses that can get licenses — and therefore accept the state's authority over them — rather than restricting DTC shipping permissions. One of the key lessons from Prohibition that regulators should keep in mind is that illegality thrives in the shadows; creating an open field for DTC businesses lets the state monitor the market and enforce its laws.

FACT - Myth: DTC shipping is full of counterfeits

Opponents of DTC shipping also claim the channel is full of counterfeit products — that bypassing wholesalers means there's no check on what the consumer is buying. This is one of the most ridiculous claims that opponents make.

Counterfeiting may be a concern for certain sectors of the beverage alcohol industry, but it's largely limited to private dealer sales between wealthy collectors. Conversely, most DTC shipping involves buying directly from the producer of the product, which would seem to be the best way to avoid counterfeits. After all, what winery would fill their bottles with fake product?

And when DTC shipping involves buying from a retailer, that retailer would have had to purchase their products through their local three-tier system, which also would seemingly vouchsafe those products.

While consumers should be wary of too-good-to-be-true auctions and private sales, blocking established producers and retailers from shipping DTC is not the way to combat counterfeiting.

FACT - Myth: DTC shipping is a jobs killer

It's also often argued that enabling remote businesses to sell into a state's market will damage local retailers and lead to job loss. This is one of the most blatant examples of protectionism that DTC opponents trot out, and it only serves to hurt local consumers and discounts the ability of local businesses to compete in an open market.

See Wine.Com above

Any real advantage that DTC shippers might have is limited to their access to products and brands that aren't widely distributed. Otherwise, DTC shippers must pay the same taxes as local businesses, manage complex regulatory schema, and handle the expensive and labor-intensive shipping process.

The claim that DTC shipping creates unfair competition in the industry is also unsupported by evidence. Data from the Bureau of Labor Statistics for the New York market shows that there was net job growth for both retailers and wholesalers since 2005 (when the state opened for national DTC wine shipping).

Retailers are resilient and capable of responding to consumer demand. If states genuinely wanted to support their local retailers, they might instead look to liberalize their distribution laws rather than trying to shut down DTC shipments.

Why not DTC shipping?

a winning argument

Ultimately, DTC shipping of alcohol happens because it is popular. Today's consumers are used to buying everything online and expect the same for their beverage alcohol choices. As long as demand continues, businesses will work to fill that need. States are better off establishing clear, effective and manageable laws on how alcohol can be shipped within their borders.

The adverse claims that opponents bring up — that DTC shipping is unmanageable, states lose tax revenue, minors abuse it with impunity — with either under any real scrutiny. Beyond those who oppose any amount of alcohol consumption, protectionism is the only real driver of opposition to DTC shipping. States should not let fear of outside competition win out. Instead, they should create effective pathways for consumers to safely get what they want.

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Sales

Realities

FACT: According to a July 2021 survey by Morning Consult, 62% of Americans are more likely to buy alcohol in person vs. online given the opportunity.

Again, the only claims that collapse under "real scrutiny" are Koral's.

The only theoretical assertions are Koral's - few facts, lots of "expert" opinion.

Actually, a very traditional problem exacerbated by the anonymity and accessibility e-commerce provides minors.

More unique is the lack of liability should product be placed in the hand of a minor. Who is held accountable?

Koral starts by disproving the premise of his own "myth" in the third sentence - minors will in fact, attempt to buy DTC and, according to a study published in the Journal of Pediatrics & Adolescent Medicine, will successfully receive their product 45% of the time.

Boutique wine may not be the most popular choice for underage drinkers, but if DTC licensing privileges expand as Koral suggests a few paragraphs down, this argument is irrelevant as spirits like vodka and gin and beer get introduced to the e-commerce marketplace.

At the time of the cited FTC report - 2003 - the market didn't have iPhones or smartphones, WiFi wasn't in the dictionary and Amazon's product pool had barely expanded beyond textbooks.

Local deliveries are made through the three-tier system where licensees are liable to the state and local community whereas out-of-state shipments made through common carriers (FedEx, UPS, etc.) are much harder to penalize for enforcement agents.

FACT: In 2021, Kansas Department of Revenue has reported that, based on carrier reports, "there is a significant loss of revenue due to the State of Kansas in the form of unpaid liquor enforcement tax and gallage tax."

FACT: According to Wine.Com's list of 100 most popular wines, all of the top 10 wines sold DTC through the "world's largest" e-commerce wine store are widely distributed across the country and available in local, licensed grocery or package stores.

FACT: Even in states like Michigan and Ohio where illegal shippers could get licenses and ship legally, many repeatedly fail to do so and continue to show up as illegally shipping to consumers on carrier reports.

If states don't require common carrier reporting, it's nearly impossible to track or mitigate bad actors including unlicensed shippers or licensed shippers that fail to pay appropriate excise tax.

A major benefit of the three-tier system is that the alcohol products are strictly tracked throughout the supply chain limiting the chance of counterfeit or adulterated products entering the market. In fact, the chain of custody is so well established that any recall of an alcoholic product can be executed in less than 24 hours to protect consumers.

DTC orders are frequently routed to a fulfillment center, usually unregulated, that interrupts the tightly tracked and traced alcohol supply chain.

FACT: In a study undertaken by the Wine & Spirits Wholesalers of California, it was estimated that recently-introduced legislation aimed at expanding DTC shipping privileges to distilleries could eliminate up to 5,000 jobs.

FACT: Unlike "everything" else today's consumers buy online, alcohol is regulated by its own constitutional amendment, and consumption of it is prohibited by minors under the age of 21.

FACT: According to a 2019 national survey by the Center for Alcohol Policy, 82% of respondents agree that alcohol is different from other products and should be regulated differently.

The safest e-commerce pathway is local, licensed delivery.

Or PayPal, or a number of other anonymous app-based e-commerce banking solutions.

Here's some clear evidence:

FACT: In a study published in Journal of Pediatrics and Adolescent Medicine showed only 12% of online alcohol orders placed by underage purchasers were rejected as a result of age verification, and 45% of orders placed by underage purchasers were successfully received.

FACT: In an investigation into online alcohol retailers in Kansas, two shipments were delivered to underage individuals. In fact, one box of liquor was handed to a 7-year-old.

Many states, like Oregon, for example have special order programs for consumers to order rare wines without the need to create new DTC laws for the sale of rare wines.

After 15 years, regulators are starting to get a clear picture of the pitfalls of the wine DTC model.

FACT: In 2021, VA received \$1 million in funding to fund 10 new DTC enforcement positions.

Not only is this argument illogical, it is completely self-serving. Koral's company, SOVOS/ShipCompliant, is a tax and reporting compliance software provider for DTC shippers, and any expansion of DTC licensing increases its profitability.

The U.S. three-tier system of manufacturing, distribution, and retail sales has worked so well that Americans often take it for granted that any alcohol product sold through a licensed retailer - recognized label or not - is safe to consume.

FACT: In less regulated markets, such as Mexico, it is estimated that 36% of all alcohol is illicit. In just one month in 2020, more than 100 Mexicans died from drinking adulterated alcohol and, in early 2020, 154 people in India died from counterfeit alcohol. There are similar problems in the U.K.

Should DTC license privileges be expanded, orders will most likely be fulfilled by larger producers and/or fulfillment centers that can "manage" as Koral describes and dominate the e-commerce space by out-buying search returns, and digital ad space just like Home Depot edged out mom and pop hardware stores and Amazon edged out independent book shops.

Unless you count:
Enforcement Issues
Non-Compliance
Increased Underage Access
Lack of Supply Chain Transparency
Severe Loss of State Tax Revenue
Public Health & Safety
Local Job Loss